IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/12/2002

CORAM

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR. JUSTICE A.K. RAJAN

C.M.A.No.524 of 1996 and C.M.A.No.1323 of 1996
and
C.M.P.Nos.17959 and 17960 of 2002

C.M.A.524 of 1996:

R.Rizwan, a minor by paternal
grandfather & legal guardian. .. Appellant

-Vs-

1. R. Wahetha Begum

2. Lakshmi

3. New India Assurance
Company Limited,
92, G.N.Chetty Street,
Madras-17. .. Respondents

C.M.A.1323 of 1996:
1. Abdul Azeez
2. Mallika Begum
3. Rizwan, a minor, represented
by his paternal grandfather
Abdul Azeez)

4. Raffi

5. Noorjahan
(Petitioners-4 and 5
are minors,represented
by their father and
next friend, Abdul Azeez)
All residing at 9/2,
Jawahar Usain Khan Street,
III Lane, Royapettah,
Madras-600014. .. Petitioners

v.
1. Lakshmi
2. New India Assurance
Company Limited,
92, G.N. Chetty Road,
T.Nagar, Madras-17.
3. Gousia
4. Munira
5. Mustiri
6. Basheena
(Respondents 3 to 6 given up) .. Respondents

These appeals are filed against the award passed by the Motor Accidents Claims Tribunal (Chief Judge) in M.C.O.P.No.3023 of 1990, dated 2.2.1005, as stated therein.

For Appellant :: Mr. A.N.Viswanatha Rao

For 2nd Respondent :: Mr. S.Manohar
For R.3 in CMA 524/1996
For R.2 in CMA 1323/1996
No appearance for others.

:C O M M O N J U D G E M E N T

A.K.RAJAN,J.

For the death of one Abdul Rasheed in a motor accident that took place on 23.11.1990, two M.C.O.Ps. have been filed before the Motor Accidents Claim Tribunal (Chief Judge, Small Causes Court) at Madras. M.C.O.P.No.3023 of 1990 has been filed by the wife and minor son of the deceased; the wife filed the petition as guardian of her minor son. M.C.O.P.No.903 of 1991 has been filed by the parents, brothers and sisters of the deceased. Also the minor son of the deceased has been shown as a claimant, represented by the paternal grandfather of the minor, as guardian of the minor son of the deceased. In M.C.O.P.No.90 3 of 1991, the wife of the deceased was not impleaded as party; in M.C.O.P.No.3023 of 1990, the parents as well as brothers and sisters of the deceased were not impleaded. In M.C.O.P.No.3023 of 1990, claim was made for a sum of Rs.2,00,000/-; in M.C.O.P.No.903 of 1991, claim was made for Rs.6,00,000/-. The minor son of the deceased is a petitioner in both the M.C.O.Ps. The Tribunal has not passed any order declaring either the mother of the minor or grandfather of the minor as guardian; both the M.C.O.Ps. were tried together and a common award has been passed.
2. The wife of the deceased has been examined as P.W.1; the father of the deceased has been examined as P.W.2; also five other witnesses were examined; Exs.P.1 to P.15 were marked. On the side of the respondents, one

witness by name N.G. Arumugam was examined; one document has been marked as Ex.R.1. Considering the evidence both oral and documentary, the Tribunal found the driver of the motor vehicle negligent. The Tribunal awarded a sum of Rs.2,59,000/- as compensation payable together with interest at the rate of 12 per cent from the date of petition till the date of payment; It granted one month time for payment, in default the interest is payable at the rate of 15 per cent for the said amount. Further, the Tribunal apportioned the amount as follows:

(i) In M.C.O.P.3023 of 1990, the claimants,
wife was awarded Rs.59,000/-;
minor son represented by the mother and
guardian was awarded Rs.1,00,000/-.

(ii) In M.C.O.P.903 of 1991,
The parents of the deceased were awarded each Rs.50,000/.

The claims of, the respondents 3 to 9, (the minor son of the deceased as well as the brothers and sisters of the deceased) were dismissed.

3. Aggrieved by the award of the Tribunal, C.M.A.No.524 of 1996 has been filed challenging the award in M.C.O.P.No.3023 of 1990 by the minor Rizwan, represented by the grandfather of the minor; the mother of the minor, the first petitioners therein has been arrayed as first respondent. C.M.A.No.1323 of 1996 has been filed challenging the award in M.C.O.P.No.903 of 1991 by the parents of the deceased and the brothers and sisters of the deceased. The minor son of the deceased is also included as an appellant. The grandfather of the minor has filed as guardian for the minor.

4. The Tribunal has awarded compensation for the minor son of the deceased only in M.C.O.P.No.3023 of 1990; the Tribunal dismissed the claim made by the grandfather on behalf of the minor in M.C.O.P.No.903 of 1991. From that it is clear that the Tribunal has impliedly recognized the mother as the guardian of the minor, that is, the Tribunal has not recognized the grandfather of the minor as the guardian of the minor. Therefore, the appeal, C.M.A.No.524 of 1996 can not be said to have been properly filed. Also

for the same reason, the appeal, C.M.A.3023 of 1990 filed cannot be considered as properly filed, in so far as it relates to the minor's claim. It is stated by the counsel for the appellant that pending disposal of the appeal, the grand father of the minor died.

5. With respect to the issue of negligence, the finding of the Tribunal is not disputed by the respondents. Therefore, we confirm the finding of the Tribunal that the accident was caused only due to the negligence of the driver of the motor vehicle and therefore, the liability of the insurance company is also confirmed.

6. With respect to the quantum of compensation, the deceased, Abdul Rasheed was aged 32 years; and he was having a tailoring shop with ten to fifteen machines. According to the father of the deceased, he was earning a sum of Rs.6,000/- per month. According to the wife, the deceased was earning Rs.2,000/- per month and he was giving Rs.2,000/- to the family. From the documents filed in support of the claim petition, it is seen that Ex.P.7 is an account book maintained in the tailoring shop. From that, it is proved that

the deceased was running a tailoring shop. From the fact that he was having ten to fifteen machines and employed persons for his business, it can be presumed that

he would have atleast contributed Rs.2,000/- to the family. His contribution to the family members comes to Rs.24,000/- per year. The age of the deceased was 32, as seen from the post-mortem certificate; hence the proper multiplier that has to be applied is 16. Thus, the total pecuniary loss comes to Rs.3,84,000/-. Apart from that, the petitioners are entitled to Rs.3,000/- towards funeral expenses. That apart, the wife is entitled for compensation of Rs.10,000/- towards loss of consortium and the minor son is also entitled to Rs.10,000/- for the loss of love and affection of his father. Thus, in all, the total compensation comes to Rs.4,07,000/-.

7. From and out of the compensation amount, the minor is entitled to Rs.1,50,000/;-. The wife of the deceased is entitled to Rs.1,00,000/-. The balance of Rs.1,57,000/- is payable to the mother of the deceased, since the father of the deceased is dead, pending appeal. In view of the fact that the accident t ook place in the year 1990 we confirm the interest of 12% granted by the Tribunal. But the enhanced award is payable together with interest at the rate of 9 per cent per annum.

8. During the argument, the counsel appearing for the appellant advanced arguments that the wife of the deceased was divorced by pronouncing "Talak" by her deceased husband a few days prior to the accident and therefore, she is not entitled for any compensation whatsoever. The same argument has been advanced before the Tribunal also. But the Tribunal has rightly rejected this argument. That question whether the mother of the minor was not the wife of the deceased on the date of the accident, cannot be decided by the Tribunal. We are fully in agreement with the views taken by the Tribunal on this point; therefore, we concur with the view taken by the Tribunal and recognize the mother of the minor as guardian for the minor.

9. C.M.P.Nos.17959 and 17960 of 2002:

These petitions have been filed by the brother of the deceased to recognize him as guardian for the minor. Inasmuch as we have recognized the mother of the minor as the guardian, these petitions are not maintainable, as filed. Consequently, are dismissed.

10. The Tribunal is directed to deposit the share of the minor with proportionate interest and costs in the Indian Bank, High Court Extension Counter, Chennai, till the minor attains majority. The mother of the minor Wahetha Begum shall be entitled to receive the accrued interest for the maintenance of her son, once in three months directly from the bank. With this modification, the appeals are partly allowed. No costs

Index: Yes
Web Site: Yes
vs